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IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTIGARH

F.A. NO. 153 /2003 Division Bench

FIRST APPEAL U/S. 96 OF CODE OF CIVIL PROCEDURE

(10)

APPELLANT : Gagan Rathi, aged 34 years
DEFENDANT NO.3 S/o. Shri Madan Lal Rathi
Rathi Salvent Oil Industries
Jute Mill Ward Dipopara,
Raigarh (C.G.)

P. R. No. 1263/03
Presented by Shri B.K. Kailashiya
dated 29.12.03

VERSUS

RESPONDENTS/ PLAINTIFF

:1. Shiv Kumar Sahu, aged 40 years
S/o. Khemuram Sahu,
R/o. Vill. Urkura, Tah and Distt.
Raipur (C.G.)

RESPONDENTS/ DEFENDANTS

2. Santosh Kumar Nair, Aged28 years
S/o. K.V. Nair, R/o. Dipopara
Jute Mill Ward Raigarh (C.G.)

3. Sheshnath Bhandari,
S/o. Lubha Shastri
Manager Rathi Salvet Oil Industries
Dipopara Jute Mill Ward
Raigarh (C.G.)

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4. Sandeep Verma, S/o. Kishanchand
Verma, Partner Laxmi
Scientific worksNarmada
Vihar, Station Road Raipur (C.G.)

5. The State of Chhattisgarh
Through the Collector
Raipur (C.G.)

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AGAINST THE JUDGMENT & DECREE DATED 01.04.2003 PASSED IN C.S. NO. 73-B/2001 BY THE FORTH ADDITIONAL DISTRICT JUDGE, RAIPUR (C.G.)

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HIGH COURT OF CHHATTISGARH AT BILSAPUR

Division Bench: Hon'ble Shri L.C.Bhadoo
& Hon'ble Shri Dhirendra Mishra, JJ

First Appeal No. 153/2003

Appellant : **Gagan Rathi**

VERSUS

Respondents : **Shiv Kumar Sahu & Others**

Shri Shiv Kumar Beriwal, learned counsel for the appellant.
Shri G.K.Beriwal, learned Dy. Advocate General for the State/respondent No. 5.

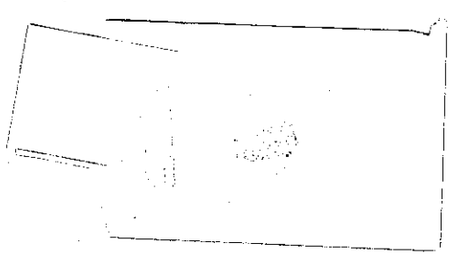
JUDGMENT

(Delivered on 09.1.2006)

Per Dhirendra Mishra, J

This first appeal has been preferred by appellant/defendant No. 2 Gagan Rathi against the judgment and decree dated 01.04.2003 passed in Civil Suit No. 73-B/2001 by IV Additional District Judge, Raipur (C.G.) by which the suit of respondent No.1/plaintiff has been decreed and a decree for a sum of Rs. 1,60,000/- has been passed against defendants No. 1, 2 and 3 jointly and severly.

2) Appellant/defendant No. 2 is the Director of Rathi Solvent Oil Industries, Raigarh whereas respondent No. 2/defendant No. 1 was his



employee and respondent No. 3/defendant No. 3 was working as Manager in the said Industries at the relevant time. Respondent No. 1/plaintiff filed a suit with an averment that he was a Porter working in the railway station Raipur. Industry of appellant/defendant No. 2 required sulphuric acid and as per the requirement order was placed telephonically on 23.02.1999 by respondent No. 3/defendant No. 3 at the instruction of appellant/defendant No. 2 to respondent No. 4/defendant No. 4, the supplier of sulphuric acid. Respondent No. 2/defendant No. 1 came to collect sulphuric acid on 24.02.1999. On 25.02.1999 when respondent No. 1/plaintiff was waiting for luggage in front of Raipur railway station, respondent No. 2/defendant No. 1 engaged him to carry a black coloured plastic jerican to be loaded in train. On enquiry made by respondent No. 1/plaintiff, respondent No. 2/defendant No. 1 apprised him that the jerican contained edible oil. However, acid leaked from the said jerican as a result of which it started pouring over his body. Respondent No. 1/plaintiff suffered acid burn injuries. He lost his left eye, his head was badly burnt, his nose and ear were burnt completely and his face was completely disfigured as a result of which he lost his total working capability. He claimed a sum of Rs. 7,60,000/- by way of damages. The respondent No. 1/plaintiff also lodged report in the police station whereupon the offence was registered.

3) Respondent No.2/defendant No. 1 in his written statement denied the averments made in the plaint and submitted that he has been exonerated in the criminal prosecution by the Special Court (Atrocities), Raipur. The respondent No.2/defendant No. 1 also submitted that he carried out the work at the instructions of respondents No. 2 & 3/defendants No. 1 & 3 and therefore, he was not responsible for paying the damages. Similarly, appellant/defendant No.2 in his written statement denied the plaint allegations and submitted that in fact respondents No. 2 & 3/defendants No. 1 & 3 has purchased the acid without any instructions from appellant/defendant No. 2 as appellant/defendant No. 2 had booked no order with respondent No.4/defendant No. 4. The consignment was carried in contravention of the instructions of appellant/defendant No.2.

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However, with an intention to have illegal gain respondent No.3/defendant No.3 sent respondent No.2 /defendant No. 1 to procure acid without observing proper precaution. Respondent No. 4/defendant No. 4 handed over the acid without following safety measures and therefore, appellant/defendant No. 2 is not responsible for paying the damages to the plaintiff and in fact respondents No. 3 & 4/defendants No. 3 & 4 are responsible for the same. Respondent No. 4/defendant No. 4 in his written statement stated that respondent No2/defendant No. 1 purchased the packed jerican containing sulphuric acid and took it from the premises and as such he is not responsible for the accident which took place after the consignment was delivered to respondent No.2/defendant No. 1. If the plaintiff has sustained any loss, defendants No. 1 to 3 i.e. respondent No. 2, the present appellant and respondent No. 3 herein are liable for the same.

4) On the basis of pleadings of the respective parties, issues were framed and the trial Court by the impugned judgment decreed the suit with cost as above, against defendants No. 1 to 3 i.e. respondents No. 2, the present appellant and respondents No. 3 herein holding them liable to pay the decreetal amount to the respondent No. 1/plaintiff jointly and severly.

5) Appellant/defendant No. 2 has preferred this appeal and challenged the impugned judgment and decree solely on the ground that in fact respondent No.4/defendant No. 4, the supplier of the sulphuric acid was mainly responsible for the accident as the accident occurred due to leakage of acid from the loose and unsealed cock of the jerican. However, learned trial Court has illegally exonerated respondent No. 4/defendant No. 4 from his liability and fastened it on defendants No. 1 to 3 i.e. respondents No. 2, the present appellant and respondents No. 3 herein and therefore, it has been prayed that impugned judgment and decree either be set aside or a decree may be passed directing respondent No. 4/defendant No. 4 to pay 50% of the decreetal amount. The appeal has been valued at Rs. 80,000/- i.e. 50% of the total decreetal amount and the Court fees has been paid accordingly.

--4/-

6) Learned counsel for the appellant/defendant No. 2 submits that the trial Court has wrongly exonerated respondent No. 4/defendant No. 4 from the liability towards payment of damages. The trial Court has ignored the statement of witness examined by respondent No. 4/defendant No. 4 who has admitted in paragraphs 14, 15 and 16 of his written statement that he handed over the consignment to respondent No. 2/defendant No. 1 to load it in the train and he believed respondent No. 2/defendant No. 1 that he shall be carrying the jerican with the Jeep. This is a clear admission of negligence on the part of respondent No. 4/defendant No. 4 and in the aforesaid circumstances, he is not responsible for paying damages to the respondent No. 2/plaintiff.

7) We have heard learned counsel for the appellant and we have perused the material available on record.

8) There is no dispute that at the time of accident respondent No. 2 herein/defendant No. 1 was present in person and in fact he carried the jerican from the shop of respondent No.4/defendant No.4. From the perusal of written statement of respondent No. 2 herein/defendant No. 1 it is evident that he has not alleged any lapse on the part of respondent No. 4/defendant No. 4 in supplying the jerican. It is not the case of respondent No. 2 herein/defendant No. 1 that respondent No. 4/defendant No. 4 supplied the acid in a leaking container and the accident occurred because of safety lapses of respondent No.4/defendant No.4.

9) In the aforesaid circumstances, the averment of appellant/defendant No.2 that the accident occurred because of negligence on the part of respondent No.4/defendant No.4 is of no consequence because appellant/defendant No.2 was not present either at the time of purchase or during the time when consignment was being carried by respondent No.2/defendant No.1 from the shop of respondent No.4/defendant No.4. Appellant/defendant No.2 has also not pleaded in his written statement regarding the negligence of respondent

No.4/defendant No.4 in supplying sulphuric acid to respondent No.2/defendant No.1. In the absence of any pleading in this regard, the grievance of appellant/defendant No.2 that the trial Court has committed illegality in exonerating respondent No.4/ defendant No.4 from payment of damages to respondent No.1/plaintiff is without any substance.

10) Thus, after hearing the learned counsel for the appellant/defendant No.2 and perusing the evidence available on record we are of the view that no case for admission of this appeal is made out. Accordingly the appeal being without substance is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge